

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ADA YEAGER, an individual,

Plaintiff,

v.

THE CITY OF SEATTLE, a municipal  
corporation,

Defendant.

Case No.: 2:20-cv-01813

**PLAINTIFF'S MOTION FOR  
EMERGENCY TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

**INTRODUCTION**

Plaintiff seeks an emergency temporary restraining order and preliminary injunction prohibiting Defendant from executing its pattern and practice of forcible eviction against Plaintiff and similarly situated unhoused persons living in Cal Anderson park by displacing them and seizing and destroying their property in violation of the U.S. Constitution and CDC standards in the middle of global pandemic and public health crisis.

**RELIEF REQUESTED**

Plaintiff respectfully requests the Court to 1) hear this Motion on an **emergency** *ex parte* basis, 2) temporarily and preliminarily restrain Defendant from enforcing Exhibit 1, an "order to remove" persons and property from Cal Anderson park, and 3) schedule a hearing on a preliminary injunction.

**FACTUAL BACKGROUND**

I provide this recitation of neutral and reliable facts based upon the best available knowledge, information, and ability.

1. On Monday, December 14, 2020, the City of Seattle posted a notice in Cal Anderson park indicating the intent to forcibly evict an encampment of unhoused people who have continuously living in the park since at least June.
2. Exhibit 1 indicates that “sweep” will occur at or anytime “after” 7:30 a.m. this morning, December 16, 2020.
3. Since the notice was posted, many housed and unhoused people have continued to flock to the encampment, helping unhoused people who want to leave in the face of the threatened eviction do so, building barricades to defend against police violence when the sweep happens, continuing to provide community-based survival needs for unhoused people, and continuing the robust political organizing and activism that has been a defining characteristic of the park since the beginning of the George Floyd uprising.
4. Presently, there are approximately 50 unhoused people living in the park, including Plaintiff.
5. Plaintiff is an unhoused individual who has lived outside on public property continuously in Cal Anderson Park (“Cal Anderson”) in Seattle since June 2020.
6. In addition to the 50 residents, as of this writing there are approximately 200 civilians are in and around the barricades prepared to defend the encampment from the threatened eviction. Over the past 12 hours, multiple police vehicles

1 have been circling the park, this morning with lights and sirens engaged, taunting  
 2 and sarcastically blowing kisses to people on the street.

3 7. The proposed sweep is in clear violation of the Center for Disease Control's  
 4 standards for the treatment of unhoused people during the still wildly out-of-  
 5 control COVID pandemic.

6 8. Defendant fails to provide sufficient shelter space to meet the needs of Seattle's  
 7 unhoused population.

8 9. Defendant has taken active, extraordinary measures to obstruct access to the  
 9 park's restrooms, sanitation infrastructure, running water, and electricity,  
 10 including by welding steel plates.

11 10. Defendant has taken active, extraordinary measures to evict the encampment over  
 12 the past six months, including repeated forcible removal of all persons and  
 13 property, each time without providing adequate notice and an opportunity to  
 14 respond, effectuating warrantless seizures and wanton destruction of property, and  
 15 resulting in police use of force and arrests.

### 16 AURTHORITY AND ARGUMENT

17 The "standard for issuing a temporary restraining order is essentially the same as that for  
 18 issuing a preliminary injunction." *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush & Co., Inc.*,  
 19 240 F.3d 832, 839 n.7 (9th Cir. 2001). "A plaintiff seeking a preliminary injunction must  
 20 establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable  
 21 harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4]  
 22 that an injunction is in the public interest." *Winter v. Natural Res. Defense Council, Inc.*, 555  
 23 U.S. 7, 21, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). Plaintiffs are not required to show that they  
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1 will succeed on the merits, only that they are “likely” to prevail. At a minimum, they must show  
 2 “serious questions going to the merits[,]” that the “balance of hardships tips sharply in [their]  
 3 favor, and the other two *Winter* factors are satisfied. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709  
 4 F.3d 1281, 1291 (9th Cir. 2013) (internal quotation marks omitted). All four factors are met here.

5 **A. Plaintiff is likely to succeed because the proposed sweep violates the Federal and**  
 6 **Washington State Constitutions**

7 **i. The proposed sweep violates the Fourth Amendment**

8 The Fourth Amendment of the U.S. Constitution “protects the right of the people to be  
 9 secure in their persons, houses, papers and effect, against unreasonable seizures and searches.”  
 10 U.S. Const., Amend. IV. A “seizure” under the Fourth Amendment occurs “where there is some  
 11 meaningful interference with an individual’s possessory interest in that property.” *Soldal v. Cook*  
 12 *County Ill.*, 506 U.S. 56, 63 (1992). A seizure without a warrant is “per se unreasonable. The  
 13 Government bears the burden of showing that a warrantless search or seizure falls within an  
 14 exception to the Fourth Amendment’s warrant requirement.” *United States v. Cervantes*, 703  
 15 F.3d 1135, 1141 (9th Cir. 2012). And even if a search or seizure is lawful at its inception, the  
 16 seizure “can nevertheless violate the Fourth Amendment because its manner of execution  
 17 unreasonably infringes possessory interests protected by the Fourth Amendment’s prohibition on  
 18 ‘unreasonable seizures.’” *United States v. Jacobsen*, 466 U.S. 18 109, 124-25 (1984). See also  
 19 *Lavan*, 693 F.3d at 1030.

20 Article I, Section 7 of the Washington State Constitution provides that “No person shall  
 21 be disturbed in his private affairs, or his home invaded, without authority of law.” Both the  
 22 Fourth Amendment and Article I, section 7 of the Washington Constitution prohibit  
 23 unreasonable seizures. *State v. McLean*, 178 Wn. App. 236, 244 (2013). “Article I, section 7  
 24

1 requires no less than the Fourth Amendment.” *State v. Chesley*, 158 Wn. App. 36, 45 (2010),  
2 review granted, case remanded, 174 Wn.2d 1012 (2012) (internal quotations omitted). In fact,  
3 Washington courts have noted that “the broad language of article I, section 7 is more protective  
4 than the Fourth Amendment to the United States Constitution.” *State v. Lyons*, 174 Wn.2d 354,  
5 359, n.1 (2012).

6       There should be no legal dispute that homeless individuals have a property interest in  
7 their tents, blankets, tarps, medication, personal papers and other items, and that these enjoy state  
8 and federal constitutional protection. This issue has already been resolved, and in *Lavan* the  
9 Ninth Circuit foreclosed any argument that homeless individuals do not have a protectable  
10 property interest in their belongings. *Lavan*, 693 F.3d at 1031. Therefore, the only question is  
11 whether the summary destruction of Plaintiffs’ property constitutes unreasonable seizures.  
12 Existing case law and the circumstances surrounding the seizure and destruction compel a  
13 finding that Plaintiffs are likely to succeed on this claim. The fact that the City has proposed  
14 rules governing sweeps demonstrates that they recognize a need to follow some degree of  
15 process before taking the belongings of unsheltered citizens. However, they have also  
16 demonstrated time and again that they are not willing to follow the meager protections they have  
17 put into place.

18       First, the destruction of homeless people’s property is undoubtedly a deprivation that  
19 triggers Fourth Amendment analysis. See *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th  
20 Cir. 2005). And that deprivation—the wholesale destruction of plaintiffs’ personal belongings—  
21 is patently unreasonable. *Lavan*, 693 F.3d at 1030. In fact, in *Lavan*, the Circuit noted that the  
22 City “almost certainly could not” even argue that the summary destruction of homeless people’s  
23 property under very similar circumstances was reasonable under the Fourth Amendment. *Id.*

1 When the destruction occurs during Defendants’ ongoing sweeps, the Defendants know  
 2 that the property is not abandoned—in fact, it is often property that Plaintiffs have had to leave  
 3 behind after demands by Defendants to vacate on little or no notice. There is no legitimate reason  
 4 for Defendants to seize and destroy the property of unhoused residents of the Cal Anderson  
 5 encampment without adequate notice *and opportunity to participate*, a warrant or probable  
 6 cause, or a meaningful way to reclaim seized property, especially during the middle of winter in  
 7 a pandemic. Neither can concern for the general health and safety of the community justify these  
 8 actions: the Ninth Circuit has soundly rejected these arguments. See *Lavan*, 797 F. Supp. 2d at  
 9 1015 (noting that the seizure of property “threatens the already precarious existence of homeless  
 10 individuals by posing health and safety hazards” and violated the Fourth Amendment, despite  
 11 “an inherent interest in keeping public areas clean and prosperous”).

12 **ii. The proposed sweep violates the Fourteenth Amendment**

13 Under the Fourteenth Amendment, “No state shall . . . deprive any person of life, liberty,  
 14 or property, without due process of law.” U.S. Const., Amend. XIV. To determine whether there  
 15 has been a due process violation, the Court follows a two-step analysis: first, it determines  
 16 whether there is a property interest encompassed within the protection of the due process clause,  
 17 and if there is, what process is due. *Propert v. District of Columbia*, 948 F.2d 22 23  
 18 1327 (D.C. Cir. 1991). Whether there is a protected property interest requires the court to look to  
 19 “existing rules or understandings that stem from an independent source such as state-law rules or  
 20 understandings.” *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Washington additionally  
 21 recognizes the right of ownership of personal property. “Possession of personal property is prima  
 22 facie proof of ownership and is presumptive evidence that the possession is rightful.” *Merinella*  
 23 *v. Swartz*, 123 Wash. 521, 523, 212 P. 1052, 1053 (1923) (internal quotes omitted). Article I,

1 Section 3 of the Washington State Constitution provides the fundamental guarantee that “[n]o  
2 person shall be deprived of life, liberty, or property, without due process of law.” Tents, tarps,  
3 blankets, medication, and other items are property protected by the Fourteenth Amendment and  
4 the Washington State Constitution. See *Lavan*, 693 F.3d at 1032 (holding that the protections  
5 guaranteed by the Fourteenth Amendment attach “regardless of whether the property in question  
6 is an Escalade or an EDAR, a Cadillac or a cart”). In many instances, the volume of what is  
7 taken and destroyed constitutes almost everything the individual owns.

8 The second question is what process is due, which depends on a balance of factors  
9 outlined in *Mathews v. Eldridge*: “first, the private interest affected by the government action;  
10 second, the risk of an erroneous deprivation of such interest through the procedures used, and the  
11 probable value, if any, of additional or substitute procedural safeguards; and finally, the  
12 government’s interest, including the function involved and the fiscal and administrative burdens  
13 that the additional or substitute procedural requirements would entail.” 424 U.S. 319, 23  
14 335. Defendants’ policy and practice of destroying property without any process, and storing  
15 property without sufficient notice or procedures to ensure its return, ignores these clearly  
16 established legal standards.

17 The summary destruction of property, whether it is incident to an individual’s removal, or  
18 when the individual is unable to move it during a sweep, suffers from the same constitutional  
19 infirmity—it affords no process by which the owner of the property can challenge its destruction  
20 before “the owner is finally deprived of a protected property interest.” *Logan v. Zimmerman*  
21 *Brush Co.*, 455 U.S. 422, 433 (1982). Such state action is anathema to the concept of due  
22 process. “However weighty the governmental interest may be in a given case, the amount of  
23 process required can never be reduced to zero - that is, the government is never relieved of its  
24

1 duty to provide some notice and some opportunity to be heard prior to final deprivation of a  
2 property interest.” *Proper*, 948 F.2d at 1333 (citing *Logan*, 455 U.S. at 434).

3 Despite the “truism that some form of hearing is required before the owner is finally  
4 deprived of a protected property interest,” *Logan*, 455 U.S. at 433, and very clear instruction to  
5 that effect from the Court in *Lavan* and the preceding cases, Defendants regularly destroy  
6 property without any opportunity to challenge the basis for the destruction. That is what  
7 happened to Plaintiff and other Cal Anderson encampment residents in September and that is  
8 what will happen again this week without judicial intervention.

9 In *Lavan*, the Court made it explicitly clear that “the City is required to provide  
10 procedural protections before permanently depriving [homeless individuals] of their  
11 possessions.” *Id.* at 1032. *Lavan* is consistent with numerous other cases, in which the Court  
12 required due process to challenge the basis for destruction before the property was permanently  
13 destroyed.<sup>41</sup> As in *Lavan*, “the City’s decision to forego any process before permanently  
14 depriving [homeless individuals] of protected property interests is especially troubling given the  
15 vulnerability of [the City of Seattle’s] homeless residents.” 693 F.3d at 1032.

16 In this application for a temporary restraining order, Plaintiffs seek only what *Lavan*  
17 commands: an order prohibiting Defendants from seizing and summarily destroying homeless  
18 people’s property without probable cause and constitutionally adequate notice and opportunity to  
19 be heard. *Id.* at 1033. Plaintiffs do not seek to prevent Defendants from collecting actual garbage  
20 or waste on public property. Plaintiffs simply ask that their constitutional rights not be violated in  
21 the process.

22 The sign posted at Cal Anderson on December 14 provides inadequate notice, in violation  
23 of the City’s own policy, and does nothing to provide Plaintiff with an opportunity to be heard.  
24

1 The Defendants also violate Plaintiff's Due Process rights by providing no meaningful  
2 notice or process to get back the few items they seize and store. Due process requires an  
3 individual both "be given notice and an opportunity to be heard at a meaningful time and in a  
4 meaningful manner." *Schneider*, 28 F.3d at 92. This process "must be tailored to the capacities  
5 and circumstances of those who "must rely on the process." *Goldberg*, 397 U.S. at 268-69. For  
6 the notice to satisfy due process, "[t]he notice must be of such nature as reasonably to convey the  
7 required information." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

8 The owners of seized property are frequently given no notice where they can pick up  
9 their property or even if property has been preserved. If they are given notice, the notice is  
10 inaccurate and does not outline the process actually required to get their property back. The  
11 process itself is convoluted and does not take into account any of the "capacities and  
12 circumstances" of the parties, as the Defendants are required to do. *Goldberg*, 397 U.S. at 20  
13 268-69. Taken together, the Defendants' policies are inadequate, given the serious deprivation to  
14 plaintiffs. See *Eldridge*, 424 U.S. at 341.

15 First, "the nature of the interest . . . and the degree of potential deprivation that may be  
16 created," is significant. *Eldridge*, 424 U.S. at 341. Assuming, that Defendant preserves some  
17 property, these few remaining items are frequently the last remaining belongings an individual  
18 has. See *Lavan*, 693 F.3d at 1032. See also *Memphis Light, Gas and Water Division v. Craft*, 436  
19 U.S. 1, 17-18 (1974) (holding that a deprivation for even a short period of time can threaten  
20 health and safety and constitutes a significant interest). Moreover, if, as here, the notice and  
21 process for getting the property back is flawed, the individual will be permanently deprived of  
22 these items, either because they are never actually able to find them, or because it simply takes  
23 too long. Defendants' official policy requires property to be stored for 60 or 70 days. Yet,

1 employees of Defendants estimate only 1 or 2 percent of it is actually retrieved; the rest is  
2 thrown in the trash. ([http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-](http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-seattles-flawed-homeless)  
3 [seattles-flawed-homeless](http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-seattles-flawed-homeless)) Therefore, the interest and the potential deprivation are significant.

4 The second *Eldridge* factor considers “the risk of an erroneous deprivation of such  
5 interest through the procedures used, and the probable value, if any, of additional or substitute  
6 procedural safeguards.” *Eldridge*, 424 U.S. at 335. This factor requires the Court to weigh the  
7 “fairness and reliability of the existing procedures.” *Nozzi*, 806 F.3d at 1193. The Defendants’  
8 procedures for getting property back after it taken is anything but fair and reliable. As a  
9 preliminary matter, it is City officials, not the owners of the property, who sort through the  
10 property and decide what to keep and what to throw away. Further, notice about how to get one’s  
11 property back is insufficient. “To be constitutionally adequate, notice must be reasonably  
12 calculated under all circumstances, to apprise interested parties with due regard for the  
13 practicalities and particularities of the case.” *Nozzi*, 806 F.3d at 1194 (citing *Mullane*, 339 U.S. at  
14 314) (internal quotations removed). The notice provided here fails this test. There is no  
15 mechanism by which someone can challenge the taking of their property. The facility where  
16 items deemed worthy of storage are kept is at 3807 Second Ave South, approximately an hour  
17 and thirty-minute walk from downtown Seattle. According to the website for the storage facility,  
18 it is temporarily closed due to COVID. One worker at the City’s storage facility estimates that  
19 only 1 or 2 percent of the materials stored are ever picked up, with the rest eventually thrown  
20 out. ([http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-seattles-flawed-](http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-seattles-flawed-homeless-sweeps/)  
21 [homeless sweeps/](http://www.seattletimes.com/seattle-news/chaos-trash-and-tears-inside-seattles-flawed-homeless-sweeps/)). These failures in notice and process render the deprivation of property,  
22 whether temporarily or permanently, unconstitutional. See *Memphis Light, Gas and Water*  
23 *Division v. Craft*, 436 U.S. 1 (1978) (holding that a utility company violated Plaintiffs’ due  
24

process rights after Plaintiffs made “good faith efforts” to “straighten out the problem,” but were never notified of a process to resolve the issue and, despite their efforts, their service was wrongfully terminated). This is particularly true for unhoused individuals who find their belongings taken when they are temporarily or unable to physically move all of their property in the limited amount of time Defendants provide. They, moreover, rarely have access to reliable transportation or a charged cell phone, and frequently have mobility challenges. The failure to “take account for the ‘capacities and circumstances’” of the individuals who must traverse this system renders an already unfair system unconstitutional. *Nozzi*, 806 F.3d at (quoting *Goldberg*, 397 U.S. at 268-69; *Memphis Light*, 436 U.S. at 14, n. 15).

Finally, the third *Eldridge* factor also weighs in favor of a due process violation. The burden of providing adequate process, including immediate access to property and notice that effectively spells out the process to get the property back, would be minimal, since the Defendants have more than enough resources to return property to individuals, particularly when balancing their rights and the interests at stake. See *Prophet*, 948 F.2d at 1335.

### iii. The proposed sweep violates the First Amendment

The right to free speech and peaceful assembly is guaranteed by the 1st Amendment to the U.S. Constitution and Article I, Sections 5 and 7 of the Washington Constitution’s Declaration of Rights. Public parks are quintessential traditional public forums for the exercise of political speech and assembly. *Hague v. CIO*, 307 U.S. 496, 515-16 (1939). Because of the special status of traditional public fora in our constitutional form of government, “the government must bear an extraordinarily heavy burden to regulate speech in such locales.” *NAACP Western Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984) (emphasis added).

1 Tents and structures are well-established as viable instruments of political speech, and  
 2 maintaining tents and temporary structures continuously have acknowledged speech value. See,  
 3 e.g., *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984); *Students Against* 6  
 4 *Apartheid Coalition v. O'Neil*, 660 F.Supp. 333 (W.D. Va. 1987); *ACORN v. City of Tulsa*, 835  
 5 F.2d 735, 742 (10th Cir. 1987) (recognizing speech value of symbolic structures in parks);  
 6 *University of Utah Students Against Apartheid v. Peterson*, 649 S. Supp. 1200, 1204-1205 (D.  
 7 Utah 1986) (students maintained continuous presence with shanties over many months,  
 8 enhancing their expressive character). Two federal district courts have held that “tenting and  
 9 sleeping” in a public park as part of a political demonstration unquestionably is expressive  
 10 conduct implicating the protections of the First Amendment. *Occupy Minneapolis v. County of*  
 11 *Hennepin*, \_\_\_\_ F. Supp. 2d \_\_\_\_, 2011 WL 5878359, \*4 (D. Minn. 2011) (sleeping and  
 12 overnight occupation of tents in a park was expressive conduct protected by the First  
 13 Amendment, though it could be regulated by a permit scheme that functioned as a valid time  
 14 place and manner restriction); *Occupy Fort Myers v. City of Fort Myers*, \_\_\_\_ F. Supp. 2d \_\_\_\_,  
 15 2011 WL 5554034, \*5 (M.D. Florida 2011) (same).

16 Cal Anderson park has been the undisputable hub of the recent civil rights uprising in the  
 17 wake of the death of George Floyd. From nightly protests at the East Precinct, to the creation of  
 18 the Capitol Hill Autonomous Zone, to the current nightly meet-ups in the park, Cal Anderson is  
 19 the epicenter of the movement in Seattle. Many of the unhoused residents of the park are also  
 20 activists. The park is filled with political signs and slogans. Mutual Aid stations that have sprung  
 21 up at the park are also an essential component of the current movement  
 22 ([https://www.theverge.com/21377132/mutual-aid-solidarity-protests-food-assistance-police-](https://www.theverge.com/21377132/mutual-aid-solidarity-protests-food-assistance-police-brutality)  
 23 [brutality](https://www.theverge.com/21377132/mutual-aid-solidarity-protests-food-assistance-police-brutality)).  
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1 Defendant has obviously targeting the Cal Anderson encampment for special  
2 enforcement. The City has forcibly evicted the encampment multiple times while leaving many  
3 other encampments alone. The City has taken extraordinary measures to retaliate against this  
4 particular encampment because of the content of the speech and political activity it supports,  
5 much of which is very critical to the City. The threatened eviction is more likely about political  
6 repression that it is about any desire to preserve public health because it violates the City's own  
7 publicly-announced policy in response to the COVID crisis and CDC standards. Mayor Durkan's  
8 public comments about the threatened eviction shows that Cal Anderson eviction policy is linked  
9 to the barricades at the East Precinct and the still-on-going Black Lives Matter protests in an  
10 interview with the Capitol Hill Blog (<https://www.capitolhillseattle.com/2020/12/its-urgent-mayor-says-launching-initiatives-to-open-cal-anderson-remove-east-precinct-wall-amid-encampments-and-ongoing-protests/>).  
11  
12

13 **iv. The proposed sweep violates the Eighth Amendment**

14 In *Martin v. Boise*, 920 F.3d 584 (2019), the Ninth Circuit held that it was  
15 unconstitutional for a local government to criminalize the act of survival. In that case, a local  
16 government that failed to provide adequate shelter for its unhoused population attempted to  
17 enforce criminal statutes targeting unhoused people living on public property. The court struck  
18 down criminal statutes. The Ninth Circuit held the statutes unconstitutional.

19 Here, although the eviction action threatened by the City against Plaintiff and the protest  
20 encampment at Cal Anderson does not take the immediate form of a criminal statute, experience  
21 demonstrates that this is a distinction without a difference. The reality is that every past eviction  
22 at Cal Anderson has involved police action, the use force, arrests, and booking unhoused people  
23 into jail as a direct result of their providing for their own alternative housing on public property.  
24

1 Past arrests have been based upon asserted probable cause for “trespassing” on public property.  
2 Thus, while the eviction is not based upon a criminal law, it nonetheless constitutes the pretense  
3 for enforcement of facially-neutral criminal laws, resulting in the same outcome: the  
4 criminalization of survival under a government that does not provide sufficient resources to  
5 allow survival. This is a clear violation of *Martin v. Boise*. Because the City does not provide  
6 sufficient resources to ensure that its unhoused population has access to shelter, it cannot take  
7 enforcement action against unhoused people when providing their own alternative housing on  
8 public property. Thus, Plaintiff is likely to prevail on the merits.

9 **A. Plaintiffs and Similarly-Situated Individuals Have And Will Continue To Suffer**  
10 **Substantial Injury and Irreparable Harm As A Result of Defendants’ Unlawful Acts**

11 Plaintiff’s contacts with outreach workers has been disrupted by past sweeps. Plaintiff  
12 desires long-term housing and has attempted to find such accommodations without success. The  
13 City simply does not provide adequate resources to shelter its unhoused population, including  
14 Plaintiff. Of the two numbers listed on the City’s notice, one is a general information line (211)  
15 and the other is for mental health crisis care and has nothing to do with housing. If the Cal  
16 Anderson encampment is swept on or “after” December 16, 2020, Plaintiff and other similarly  
17 situated class members will not be given housing, but instead will be displaced onto yet another  
18 encampment elsewhere in the City where they do not have relationships or connections.  
19 Plaintiff’s past experience shows that all of their belongings will be seized and either  
20 immediately destroyed or thrown haphazardly and without adequate identification and cataloging  
21 into temporary storage before being destroyed. Nor does the Notice provide information about  
22 how to retrieve belongings that are placed into storage. By being forced to respond to the City’s  
23 threat to evict, and even more so when they are evicted, Plaintiff, similarly-situated persons, and  
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1 their supporters have been placed at an increased danger of COVID infection. Plaintiff and  
 2 others living at the park are essentially a COVID “pod” or family. They have well-ventilated  
 3 outdoor space, use recommended masks, and are exposed to one another on a regular basis. By  
 4 threatening to evict the encampment, the City has caused hundreds of additional people to come  
 5 to the park. By evicting the encampment, the City will cause Plaintiff and others to be spread out  
 6 far and wide across the city, increasing contacts with other encampments and the community.  
 7 The park at Cal Anderson has also become a crucial hub of Seattle’s free speech activity.  
 8 Another forcible eviction will severely chill and disrupt on-going political expression and  
 9 organizing activities. All of these issues constitute severe and irreparable harm that will and  
 10 already have begun to result from the City’s threatened eviction.

11 **i. Defendants have disregarded policies that protect plaintiffs from**  
 12 **irreparable harm**

13 The Defendant enacted “FAS 17-01” in April 2017, to formalize rules around  
 14 encampment removals. The rules require, among other things, the City to offer alternative  
 15 housing/shelter for encampment occupants, a daily list of open shelter beds, “*no fewer than 72-*  
 16 *hours’ notice*” before an encampment removal, oral notice to anyone present at the encampment,  
 17 and notice on each tent or structure at the encampment. The Defendant followed none of these  
 18 rules for past sweeps of the protest encampment at Cal Anderson. Despite posting notice *after*  
 19 the sweep of a location where residents could recover their belongings, we have no indication  
 20 that Plaintiff anyone else living at encampment were able to recover any personal property after  
 21 any of these sweeps.

22 For the proposed sweep on December 16, 2020, the City provided fewer than 48-hours’  
 23 notice. Notice was via two paper signs posted at the park. No notice was posted at individual  
 24

1 tents and no oral notice was given. Plaintiff is aware that one or two people have been provided  
2 with the opportunity to accept housing and have done so, but Plaintiff has not been offered  
3 housing and it is a poorly kept secret that the City does not provide adequate housing resources  
4 for its homeless population.

5 Absent the Court's intervention, Plaintiffs and members of the proposed class will  
6 continue to suffer irreparable harm from the Defendants' policies and practices because they  
7 violate their constitutional rights. "An alleged constitutional infringement will often alone  
8 constitute irreparable harm." *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997)  
9 (internal citation omitted). "Unlike monetary injuries, constitutional violations cannot be  
10 adequately remedied through damages and therefore generally constitute irreparable harm."  
11 *Nelson v. Nat'l Aeronautics & Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), rev'd on other  
12 grounds and remanded, 562 U.S. 134 (2011). No countervailing interest of the Defendants  
13 outweighs the dire impact on Plaintiffs and members of the proposed class, who are unhoused  
14 and live outside during even the most severe weather. The loss of essential possessions is  
15 "devastating" and clearly constitutes irreparable harm. *Lavan*, 693 F.3d at 1032 (internal  
16 citations omitted); *Lavan*, 79 F.Supp. 2d at 1019.

17 Plaintiff and other residents of the Cal Anderson encampment are doing their best to  
18 survive during the most trying of circumstances – living unhoused in winter in the middle of a  
19 global pandemic. Plaintiff's contacts with outreach workers has been disrupted by past sweeps.  
20 Plaintiff desires long-term housing and has attempted to find such accommodations without  
21 success. The City simply does not provide adequate resources to shelter its unhoused population,  
22 including Plaintiff. Of the two numbers listed on the City's notice, one is a general information  
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 3 another encampment elsewhere in the City where they do not have relationships or connections.  
 4 Plaintiff’s past experience shows that all of their belongings will be seized and either  
 5 immediately destroyed or thrown haphazardly and without adequate identification and cataloging  
 6 into temporary storage before being destroyed. Nor does the Notice, Exhibit 1, provide  
 7 information about how to retrieve belongings that are placed into storage. By being forced to  
 8 respond to the City’s threat to evict, and even more so when they are evicted, Plaintiff, similarly-  
 9 situated persons, and their supporters have been placed at an increased danger of COVID  
 10 infection. Plaintiff and others living at the park are essentially a COVID “pod” or family. They  
 11 have well-ventilated outdoor space, use recommended masks, and are exposed to one another on  
 12 a regular basis. By threatening to evict the encampment, the City has caused hundreds of  
 13 additional people to come to the park. By evicting the encampment, the City will cause Plaintiff  
 14 and others to be spread out far and wide across the city, increasing contacts with other  
 15 encampments and the community. The park at Cal Anderson has also become a crucial hub of  
 16 Seattle’s free speech activity. Another forcible eviction will severely chill and disrupt on-going  
 17 political expression and organizing activities. All of these issues constitute severe and irreparable  
 18 harm that will and already have begun to result from the City’s threatened eviction.

19 **B. The Balance of Equities is in the plaintiff’s favor**

20 Where Plaintiffs show the likelihood of success on the merits and irreparable harm, “the  
 21 balance of equities and public interest tip in favor of Plaintiffs.” *Los Padres Forestwatch v. U.S.*  
 22 *Forest Service*, 776 F. Supp. 2d 1042, 1052 (N.D. Cal. 2011). The more permanent Plaintiffs’  
 23 harm if relief is denied and the more temporary Defendant’s harm if it is not, the greater the  
 24

1 balance tips toward Plaintiffs. *League of Wilderness Defenders*, 752 F.3d at 765. The District  
2 Court in *Lavan* agreed that the balance of equity tipped in Plaintiffs' favor: "The City's interest  
3 in clean streets is outweighed by Plaintiffs' interest in maintaining the few necessary personal  
4 belongings they might have." *Lavan*, 797 F. Supp. 2d at 1019-20.

### 5 **C. Temporary Restraining Order is in the Public Interest**

6 The fourth element considers how an injunction will impact non-parties. *League of*  
7 *Wilderness Defenders*, 752 F.3d at 766. This prong, too, is in Plaintiffs' favor since "[i]t is  
8 always in the public's interest to prevent the violation of a party's constitutional rights", and all  
9 the more so when the violation is being done in the name of their own government. *Melendres v.*  
10 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). The unhoused individuals affected by the  
11 Defendants' unlawful acts are part of the public and are directly harmed by the sweeps. Further,  
12 the proposed sweep will drive a community of individuals that have had contact with one another  
13 into spaces with additional people – shelters, other encampments, the streets. The sweep itself  
14 will bring the residents of the encampment into contact with Parks employees and police  
15 officers. They will have to have further contact with City employees if they are to get their  
16 belongings back at some future point. This is the exact situation that the CDC was concerned  
17 about when issuing guidance to allow encampments of unsheltered individuals to remain intact  
18 during COVID. The City itself recognized these concerns when it indicated in March that it  
19 would not sweep homeless encampments during the pandemic. In the midst of a surging  
20 pandemic, it is in the best interest of the public for the community at Cal Anderson to remain in  
21 place.

### 22 **E. A Temporary Restraining Order Should Apply to the entire Cal Anderson** 23 **encampment**

1 An injunction may extend beyond the named plaintiffs if it “is necessary to give  
 2 prevailing parties the relief to which they are entitled.” *Easyriders Freedom F.I.G.H.T. v.*  
 3 *Hannigan*, 92 F.3d 1486, 1501B02 (9th Cir. 1996) (internal citation and emphasis omitted);  
 4 “Class-wide relief may be appropriate even in an individual action.” *Bresgal v. Brock*, 843 F.2d  
 5 1163, 1171 (9th Cir. 1987) (noting that “The district court has the power to order nationwide  
 6 relief where it is required.”). Defendants seize and discard property of all individuals present at a  
 7 location during a sweep. It is not possible, practical, or effective to limit the relief to only certain  
 8 individuals. The injunction must extend to all unhoused people currently living in the Cal  
 9 Anderson encampment. See, e.g., *Lavan*, 693 F.3d at 1026, 1033 (injunction applies to “all  
 10 unabandoned property on Skid Row” because “it would likely be impossible for the City to  
 11 determine whose property is being confiscated”).

#### 12 **F. The Requirement of a Bond Should be Waived**

13 Federal courts may exercise their discretion under FRCP 65(c) to waive the bond  
 14 requirements in suits to enforce important federal rights of public interest. *Barahona-Gomez v.*  
 15 *Reno*, 167 f.3d 1228, 1237 (9th Cir. 1999); *Cal. ex rel. Van de Kamp v. Tahoe Reg'l Planning*  
 16 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (no bond required for non profit group). This Court  
 17 should do so here.

#### 18 **IV. CONCLUSION**

19 This action challenges a proposed sweep of an established encampment of unsheltered  
 20 citizens living in Cal Anderson in the middle of a raging pandemic – flinging them far and wide  
 21 into a community that does not have sufficient shelter or housing for them. This sweep will  
 22 deprive them of their possession, likely permanently. For the aforementioned reasons, Plaintiffs  
 23  
 24

1 and members of the proposed class are entitled to injunctive relief to prevent their property from  
2 being destroyed. A proposed order is submitted herewith.

3  
4  
5 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of December, 2020.

6 MAZZONE LAW FIRM, PLLC

Attorney for Plaintiff

7 By: s/Braden Pence

Braden Pence, WSBA #43495

8 [bradenp@mazzonelaw.com](mailto:bradenp@mazzonelaw.com)

3002 Colby Ave., Ste. 302

9 Everett, WA 98201

**CERTIFICATE OF SERVICE**

I hereby certify that on the December 16, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) and persons of record. I hereby certify that I have served all non CM/ECF participants via United States Postal Service.

s/ Elizabeth Crafton

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**EXHIBIT 1**

DATE of NOTICE 12/16/20



City of Seattle

# NOTICE/AVISO

## ORDER TO REMOVE ALL PERSONAL PROPERTY ORDEN DE RETIRAR TODOS LOS BIENES PERSONALES

AS OF/ DESDE	TIME/ HORA	LOCATION/ UBICACIÓN
12/16/20	7:30 am	Cal Anderson Park

Materials in this area are an obstruction of the intended use of this property, are in a hazardous location or present a hazard. This is not an authorized area for storage or shelter. Any materials left here will be removed by the City on or after the date and time posted above, and belongings found by the City and authorized for storage will be kept for 70 days at no charge. / Los materiales en esta zona son un obstáculo para el uso previsto de esta propiedad, están en un lugar peligroso o representan un peligro. Esta no es una zona autorizada para almacenamiento o refugio. A partir de la fecha y hora publicadas anteriormente, cualquier material que se deje aquí será retirado por la Ciudad, y las pertenencias encontradas por la Ciudad y autorizadas para el almacenamiento se guardarán durante 70 días sin costo alguno.

TO RECOVER OR ASK ABOUT STORAGE  
OF BELONGINGS CALL: / PARA  
RECUPERAR SUS PERTENENCIAS, LLAME  
AL:

**206-459-9949**

The City will deliver stored belongings to you. Belongings are stored at: 3807 2<sup>nd</sup> Ave S / La Ciudad le entregará las pertenencias almacenadas. Las pertenencias se almacenan en: 3807 2<sup>nd</sup> Ave S.

### FOR OUTREACH AND HOUSING SUPPORT CALL:

para asistencia sobre contactos con la comunidad y sobre la vivienda, llame al:

**211 or 206-461-3222**